IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.482 and 483 of 2007

M/s.Services Association of Seventh
Day Adventists P. Ltd.,
#AA-148, 3rd Avenue,
Anna Nagar,
Chennai-600 040. ..Appellant in both the T.C.(A)s.

Vs

The Assistant Director of Income-tax,
Exemption-III,
Chennai. ..Respondent in both the T.C.(A)s.

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'B', Chennai in I.T.A. Nos.960 & 961/Mds/2002 dated 21.04.2006 for the assessment years 1997-98 and 1998-99, respectively against the order of the Commissioner of Income Tax (Appeals) XI, Chennai in ITA.Nos.47848/2001-2002 dated 15.3.2002 and order dated 29.3.2001 in PAN/GIR.No.3606-S-TN 1998-99 from the Deputy Director of Income Tax (Examption) III, Chennai 34 and order dated 29.3.2001 in PAN/GIR/No.3606-S for the Assessment year 1997-98 from the Deputy Co Director of Income Tax (Examption) III, Chennai 34.

For Appellant : Mr.Philip George

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed under Section 260A of the Income Tax Act, 1961 by the assessee, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'B', Chennai in I.T.A. Nos.960 & 961/Mds/2002 dated 21.04.2006 raising the following common substantial questions of law:-

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"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in taking cognizance of the fresh grounds in appeal, for making out a new case, for the first time before the Tribunal, totally deviating from the Assessment proceedings and the Appellate proceedings before CIT(A)?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in remitting the entire issue back to the CIT(A), by considering fresh grounds raised for the first time totally deviating from the assessment proceedings and appellate proceedings and thereby permitting the department to make roving enquiries?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in adjudicating on the fresh grounds raised by the Department for the first time to make a new case, when the Department had not obtained any leave for raising such grounds by satisfying the Tribunal that the grounds were bonafide and that the same could not have been raised earlier for good reasons, as observed by the Supreme Court in Jute Corporation of India Ltd. v. CIT [1991] 187 ITR 688 and in National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383?

4. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in adjudicating on the fresh grounds raised by the Department without a speaking order as to how such grounds, were only questions of law arising from the facts which are on record in the assessment proceedings?

5. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in remanding back the entire issue to the CIT(A) to consider whether the receipts were voluntary contribution, even though there is no dispute with regard to the application of such income for charitable purpose?"

2. The facts leading to the above substantial questions of law are as under:

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The assessee is a company registered under Section 25 of the Companies Act. It is a charitable organisation and is also registered with the Revenue under Section 12A(a) of the Income-tax Act ("Act" in short). It carries on various activities through its church organisation called Southern Asia Division of Seventh Day Adventist, supporting about 1016 Evangelist and Pastoral workers. Their work is to preach the word of God from the Bible in and around the churches. They also teach healthful living and provide medical and relief services where they are needed. The assessee also incurred substantial administrative expenses for these pastoral works consisting of Salary, Travel Allowance, Medical Allowance, Educational Allowance, House Rent Allowance etc. In order to meet these expenses and to carry out the various activities, the assessee Company collected donations from local contributions and substantial donations from foreign sources also. The operation of the assessee company pertains to the field of medical relief, education relief to poor, rehabilitation of victims due to natural calamities like flood, cyclone, earth quake etc. The relevant assessment years are 1997-98 and 1998-99 and the corresponding accounting years ended on 31.03.1997 and 31.03.1998, respectively. For the assessment year 1997-98, the assessee filed Return of income on 29.10.1997 and the same was processed under Section 143(1)(a) of the Act. Later, the assessment was taken up for scrutiny and notice under Section 143(2) of the Act was issued. During the year of account, the assessee admitted gross receipts to the tune of Rs.17,77,99,694/-. The Assessing Officer granted exemption in respect of the above receipt under Section 11 of the Act. While completing the assessment, the Assessing Officer noticed that the assessee had received foreign income to the tune of Rs.14,19,84,931/-, but the assessee admitted only to the extent of Rs.10,69,02,633/-. Hence the difference of Rs.3,50,82,298/- was unexplained and also not duly recorded in the books of account. The Assessing Officer made addition to the said amount as unexplained foreign income under the head "income from other sources". For the assessment year 1998-99, the assessee filed Return of income on 23.10.1997 and the same was processed under Section 143(1)(a) of the Act. Later, the assessment was taken up for scrutiny and notice under Section 143(2) of the Act was issued. During the year of account, the assessee admitted gross receipts to the tune of Rs.19,26,73,934/-. The Assessing Officer granted exemption in respect of the above receipt under Section 11 of the Act. While completing the assessment, the Assessing Officer noticed that the assessee had received foreign income to the tune of Rs.2,66,21,036/- which was not duly recorded in the books of account and the assessee had failed to give satisfactory explanation with supporting proof. The total contribution received by the assessee was Rs.12,12,26,822/- and only as per the Income and Expenditure Account, the foreign contribution is shown as Rs.9,46,05,786/-. The said difference of Rs.2,66,21,036/- was not recorded and hence the Assessing Officer treated the said

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amount as unexplained foreign income and assessed the same under the head "income from other sources". Aggrieved by the orders, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeals. Aggrieved, the Revenue filed appeals to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal remanded the matter to the C.I.T.(A) with a direction to redo the appeals afresh. Hence the present tax cases by the assessee.

3. Learned counsel appearing for the assessee submitted that the Tribunal ought to have appreciated that the assessee had admittedly applied the receipts for charitable purposes and therefore satisfied the conditions stipulated under Section 11 of the Act for exemption. The counsel also submitted that the fresh grounds were raised by the Department first time before the Tribunal and hence the Tribunal ought not have entertained the same. It is also further submitted that the Tribunal exceeded the power envisaged under Section 254 of the Act.

4. Heard the counsel. It is seen that the Departmental Representative appearing for the Tribunal raised a specific plea that the assessee's books of account did not reflect foreign contribution received by the assessee as "voluntary contribution". He further submitted that under Section 12 of the Act, the receipts which are not voluntary, would not be covered under the provisions of Section 11 of the Act to qualify for exemption. As there is no finding by the C.I.T.(A), the Departmental Representative appearing before the Tribunal requested the Tribunal to set aside the appeals to consider the matter after considering the materials and records. The Tribunal, in its order, held as follows:-

> "4. We have carefully considered the rival submissions and carefully perused the records. In the facts and in the circumstances of the present, we are convinced with the arguments of the ld.DR as well as the ld. Counsel for the assessee that the entire issue should go back to the file of the ld. CIT(A) to consider whether there is anything on record to suggest that receipts of the assessee were in the nature of voluntary contribution and whether exemption should have been granted on the basis of mere application of receipts, which fact apparently has not been proved in the instant case. While re-deciding the issue in accordance with law, the ld. CIT(A) should afford adequate opportunity of being heard both to the assessee as well as the A.O."

From a reading of the above, it is clear that it is a remand by the Tribunal to C.I.T.(A) with a direction to rehear the matter afresh, after giving opportunity to both the parties. The counsel appearing for the assessee also unable to say that the remand would

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cause great hardship and prejudice to him. Under the circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, no substantial questions of law arise for consideration of this Court and accordingly the tax cases are dismissed. Consequently, M.P.No.1 of 2007 in T.C.(A) No.483 of 2007 is closed. No costs.

km

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench "B",
   Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals) XI,
   Chennai-34.

4. The Deputy Director of Income-tax (Exemptions)-III,
   Chennai-34.

5. The Assistant Director of Income Tax Exemption III,
   Chennai.

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